IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

::::

ORDER

1. **S.B. CIVIL WRIT PETITION NO.616/2002-STATE OF RAJASTHAN & ANR. VS. SMT. GEETA BAI & ANR.**

2. **S.B. CIVIL WRIT PETITION NO.617/2002-STATE OF RAJASTHAN & ANR. VS. SMT. MOHANI BAI & ANR.**

3. **S.B. CIVIL WRIT PETITION NO.620/2002-STATE OF RAJASTHAN & ANR. VS. SMT. MOHAN BAI & ANR.**

WRIT PETITOIN UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 3rd November, 2006

PRESENT

REPORTABLE

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Rameshwar Dave, Dy. Government Advocate for the petitioner.
Mr.R.S. Saluja, Advocate for the respondents.

<><><>

BY THE COURT: -

These writ petitions have been filed by the State Government against different awards passed by the learned labour court, but the issues raised therein are substantially same not only on law but on facts as well therefore they were taken up for hearing together and are now being decided by this common judgment.

In S.B. Civil Writ Petition No.616/2002, a reference was made to the labour court by the appropriate Government on 3.6.1997 for adjudication on the question whether the removal of the respondent workman by the management Principal, Medical Officer, General Hospital, Pratapgarh was legal and justified and if not, what relief and amount the workman is entitled to. The case of the workman before the learned labour court was that she was appointed on the post of ward boy on 28.5.1992 and worked with the management upto 31.12.1995 on which date she was removed by verbal order. Even though she has completed more than 240 days in their service, the management did not make compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947

(in short the Act of 1947) prior to removal of the workman. The management contested the claim of the workman and contended that she was working only on part time basis for two to three hours in a day and a part time employee did not fall within the ambit of workman in the meaning of Section 2(s) of the Act of 1947. The learned labour court on the basis of evidence in the case concluded that the respondent had completed more than 240 days in the calender year immediately preceding the date of her removal and in the light of law laid down by this Hon'ble Court in Yaswant Singh Vs. State of Rajastha (1989 (1) RLR 156) even a part time employee would be a workman for the purpose of Industrial Disputes Act. The learned labour court therefore directed reinstatement of the workman with continuity in service and 70% back wages.

In S.B. Civil Writ Petition No.617/2002, the reference was made by the appropriate Government to the learned labour court on 1st May, 1997 as to whether the removal of the workman-respondent by Principal Medical Officer, Pratapgarh

from their service w.e.f. 8th April, 1996 was legal and justified and if not what relief she was entitled to. According to her claim, she was appointed as wardboy with the management on 28.2.1992 and worked with them upto 31.1.1996. She was removed from service w.e.f. 1.2.1996. She had completed 240 days in the calender year immediately proceeding to the date of her removal yet the management did not make any compliance of the provisions of Section 25F of the Act of 1947. The claim of the workman was contested by the management who in their reply contended that the respondent-workman was never engaged on the post of ward boy. She was merely working on part time basis for two hours in a day for the work of cleaning and sweeping. Similar objection was also taken in this case that the part time employee could not be come within the definition of the working as given under Section 2(s) of the Act of 1947. The learned labour court on the basis of evidence adduced in the case held that the respondent-workman completed 240 days in the calender year immediately proceeding to the date of her retrenchment and over ruled the objection of the management that a part time employee

workman could not fall within the purview of the workman within the Section 2(s) of the Act of 1947 and directed reinstatement of the respondent-workman with continuity in service and 70% of the back wages.

In S.B.Civil Writ Petition No.620/2002, also reference on an identical dispute was made by the appropriate Government on 1st May, 1997 to the learned labour court whether removal of respondent-workman by Principal Medical Officer, Partapgarh from their service was legal and justified and if not to what relief she was entitled to. In this case the claim of the respondent-workman was that she was engaged on the post of ward body on 28.5.1992 and worked with the respondent upto 31st May, 1992 and prior to her removal, compliance of Section 25F of the Act of 1947 has not been made although she has completed more than 240 days in the calender year just preceding to her removal. The management contested the claim of the respondent-workman on the plea that she was merely engaged on part time basis and work for two hours in a day for the purpose of cleaning of the office and that she had

not completed 240 days. The learned labour court on the basis of evidence recorded in the case, concluded that the workman had completed 240 days and while relying upon the judgment of Yawant Singh (supra) held that even a part time employee would be a workman for the purpose of Industrial Disputes Act. The learned labour court directed reinstatement of the respondent-workman with continuity of service with 70% of the back wages.

This Court while issuing the notices to the respondents on 19.2.2002 in S.B. Civil Writ Petitions No.616/2002 and 617/2002 while observing that in spite of the fact that the reference was made in respect of the termination of the service w.e.f. 31.1.1996, the labour court amended that date of termination and came to the conclusion that services of the workmen stood terminated illegally from 31.12.1995, stayed the operation of the impugned award. In S.B.Civil Writ Petition No.620/2002, this court while observing that no specific date of removal was mentioned in the terms of reference and therefore, the reference was vague and

therefore nothing was required to be decided by the learned labour court, stayed the operation of the award in that case too.

I have heard Shri Rameshwar Dave, learned Dy. Government Government and Shri R.S. Saluja, for the respondents.

Shri Rameshwar Dave, learned Dy. Government Advocate argued that the appointment of the respondent-workman was made only for the purpose of cleaning of the office on part time basis and they did not work on regular basis nor was their appointment was made on regular basis and therefore they could not be treated as working in the meaning of Section 2(s) of the Act of 1947 and on that basis he further argued that there was no question of any violation of Section 25F of the Act of 1947 and further more the learned labour court could not direct their reinstatement in service because they were not appointed against any regular post, but were engaged only on part time basis for the work of cleaning of office. Shri

Rameshwar Dave, learned Dy. Government Advocate relied upon the judgment of the Hon'ble Supreme Court in Hochtief Gammon VS. Industrial Tribunal, Bhubaneshwar reported in AIR 1964 SC 1764 and Pottery Mazdoor Panchayat Vs. The Perfect Pottery Co.Ltd & Anr. Reported in AIR 1979 SC 1356 and on the strength of these judgments argued that the learned labour court had no power to travel beyond the terms of reference. Shri Rameshwar Dave, learned Dy.Government Advocate argued that the learned labour court has committed serious eeror of law amounting to an error on the face of record by altering the date of removal from 31.1.1996 as mentioned in the terms of reference to 31.12.1995 by describing this as typing error. Even if it is considered to be an error of this nature, learned labour court on its own could not correct it. The appropriate course for the learned labour court was to request the appropriate Government for desired correction in the terms of reference, if at all the same was considered necessary.

Shri R.S. Saluja, learned counsel for the respondent

argued that as per the law laid down by this Court in Yaswant Singh (supra), even a part time employee would fall within the purview of workman for the purpose of Industrial Disputes Act, 1947. He argued that evidence adduced in all the three cases conclusively proved that workman in each of the cases had completed 240 days in the calender year immediately preceding the date of their retrenchment and therefore compliance of Section 25F of the Act of 1947 was necessary. Findings recorded by the learned labour court on that aspect of the matter are not open to challenge because they are based on correct appreciation of the evidence. Whether or not the workman has completed 240 days is essentially a question of fact. Learned counsel for the respondent argued that merely because in two cases, the date of the removal was wrongly mentioned as 31.1.1996 in terms of the reference and the workmen had come out with a case in their statement of claim that the said date was 31.12.195, this would not tantamount to travelling beyond the terms of the reference because the question referred to the court in essence was one relating to removal of the workman without making compliance of Section

25F of the Act of 1947. He argued that all these workmen were engaged on clear vacant post of ward body. In regard to the terms of the reference in third case, i.e., S.B. Civil Writ Petition No.620/2002 merely because the date of removal has not been mentioned, if award has been passed taking the date as given in the statement of claim, this would also not amount to changing the terms of the reference. Appointment of all the workmen was made against the clear vacant post of ward boy and therefore, the direction to reinstate them was perfectly legal and justified. He further argued that the management did not raise any objection with regard to the terms of the reference and the change of the date of removal before the learned labour court. Shri R.S. Saluja, learned counsel for the respondent argued that in passing the award the learned labour court is fully competent to adjudicate upon the matters not only on the dispute referred to it, but also on matters which appear to be connected with or relevant to the dispute. Such a power, according to Shri R.S. Saluja, is to be found in Section 10(1)(c) of the Act of 1947. Shri R.S. Saluja has in support of his arguments relied upon the judgment of the

Hon'ble Supreme Court in Madan Pal Singh Vs. State of U.P. AIR 2000 SC 537. He therefore argued that award passed by the learned labour court is perfectly just and the writ petition deserves to be dismissed.

I have considered the arguments advanced by learned counsel for the parties and scanned the record.

At the outset it may be noted that not much stress has been laid by the learned counsel for the petitioner on the question whether the respondent-workman had completed 240 days in their services. Focus of his arguments has remained mainly on the point that they have been engaged only on part time basis for the work of cleaning of the office, their appointment cannot be taken to have been made on a regular basis against a regular post. In the face of these facts and the evidence as recorded by the learned labour court, I do not consider it appropriate to now re-examine that issue. Not only because this is a question of fact, but also for the reason that the petitioners have not been able to point out any error

apparent on the face of record in such findings of fact recorded by the learned labour court.

That now takes me to the another significant question whether change of the date of termination by the learned labour court in two cases i.e. in S.B. Civil Writ Petition No.616/202 and 617/2002 for the purpose of adjudication of the dispute and accepting the date of removal as given by the workman in the statement of claim as correct even though no such date was mentioned in the terms of reference would mean that the learned labour court traveled beyond the terms of reference and acted without jurisdiction in answering the reference.

So far as first judgment relied upon by Shri Rameshwar Dave learned Dy. Government Advocate in Hochtief Gammon (supra) is concerned, the Hon'ble Supreme Court in that case held that question as to who was employer was not incidental to the industrial dispute which was substantial dispute between the parties and on that basis it concluded that the third party namely, M/s. Hindustan Steel Ltd in that case over and above

the party referred to in the terms of reference could not be added and summoned under the implied powers of the tribunal under Section 18(3)(b) of the Act. Section 18(3)(b) inter alia provides that a settlement arrived at in the course of conciliation proceedings under the Act of 1947 or in an arbitration award in a case where a notification has been issued under sub-section (3-A) of Section 10A an award of a labour court, Tribunal or National Tribunal which has become enforceable shall be binding on all the other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause. The argument before the Hon'ble Supreme Court was that this was a matter connected with and relevant to main industrial dispute referred to the labour court. The Hon'ble Supreme Court however rejected the argument holding that this by itself is a substantive dispute and cannot be regarded as incidental in any sense.

Another judgment which the learned Dy. Government Advocate relied upon in Pottery Mazdoor Panchayat (supra) was a case wherein terms of reference were confined to the question whether closure of the industry in that case was proper and justified but the tribunal went far behind the terms to examine the question whether the business of the industry concerned was in fact closed down by the management. Hon'ble Supreme Court in those facts held that the tribunal had no jurisdiction to go behind the reference and inquire into the question whether the closure of business was proper and justifiable.

Third judgment on the point which has been relied on by Shri R.S. Saluja, learned counsel for the respondents is that of Madan Lal's case (supra) wherein the name of the workman mentioned in the terms of reference was found to be wrong and therefore, the labour court returned the award of no industrial dispute. The appropriate Government subsequently issued amended reference order by substituting the correct name of the workman. The learned labour court however

refused to pass award even on the amended reference. The Hon'ble Supreme Court held that when the reference had been amended, the jurisdiction stood conferred upon the labour court and it should have held the proceeding of the State taking the reference to be valid from the date of its amendment and with the consent of the parties could have relied upon the evidence which was recorded before the reference was amended. This judgment in my view may provide some guidance for deciding the controversy which in the present matter.

A reference to the provisions of Section 10 of the Act of 1947 for deciding the present controversy would be relevant and therefore, the aforesaid provision is extracted in extenso:

> "**10. Reference of disputes to Boards, Courts or Tribunals.-**(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-
>
> (a) refer the dispute to a Board for promoting a settlement thereof; or
>
> (b) refer any matter appearing to be connected

with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing t be connected with, or relevant to the dispute, whether it relates to any matter specified n the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):

Provided further that where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been firvolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the same may be, constituted by the State Government."

Sub-section (1) of Section 10 including all its clauses (a) to (d) would make it clear that the legislature has intended to cover not only the principal dispute referred to the labour court/industrial tribunal for their adjudication but also all other incidental disputes thereto or connected therewith. Section 10 provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may any time, by order in writing refer the dispute to a Board, Court of inquiry, labour court for adjudication or the tribunal for adjudication respectively with reference to clauses (a) to (d).

So what is referred as an industrial dispute is not just the dispute stricto senso but also the matters which appear to be connected therewith or relevant thereto In first two cases, the date of removal in the terms of reference was mentioned as 31.1.1996, but the workmen in their statement of claim came out with the correct date which according to them was in fact 31.12.1995, it cannot be said that the labour court while exercising its jurisdiction to adjudicate upon the referred dispute was completely divested of its authority to adjudicate

upon the industrial dispute referred to it just because there was some variation between the date of termination as mentioned in terms of reference and the one asserted by the workman in his statement of claim. The date which was disclosed by the workmen in the statement of claim was not a date later than the date as mentioned in the terms of reference but in fact an earlier date and there was no so much of time gap between the two dates i.e., just one month. In third case also even when no date was given and therefore if the workman had come out with such date in his statement of claim it cannot be said that the terms of reference were so vague as to be completely ignored to the extent of passing an award of no reference. In all the three cases, the correct date of termination/removal disclosed by the workmen was accepted as the basis for adjudication of the dispute. There was nothing illegal in doing so by the labour court because firstly the Act of 1947 has been enacted with the intention of investigation and settlement of the industrial dispute as would be evident from its aims and objects and therefore, if the workman has come out with the particular date which

according to him/her is the correct date of removal / termination, there is no reason why that should not form the basis for adjudication of the dispute by the labour court. Moreso when there is no dispute or confusion as to who is employee and who his employer is. This can be examined from the point of view of the prejudice being caused to the management also. In my considered view, in a situation like this all that would happen would be to enable the labour court to proceed with the process of adjudication and the dates so disclosed by the workman would then form the basis for deciding whether or not compliance of the Section 25F of the Act of 1947 has been made and the calculation of 240 days for the purpose of Section 25F would then be made with reference to such date. Similarly this date would be forming the basis of deciding whether or not the provisions of Section 25G and 25H have been violated. All these issues would have to be proved on the basis of evidence led by the parties. This goes without saying that if the workman fails to to prove the facts including of such date with regard to violation of any of the provisions, the reference would be answered accordingly and if he proves

the same then definitely he would be entitled to a favourable award.

On analysis of the law as discussed so, I am of the considered view that the learned labour court has not committed any error of law in proceeding to adjudicate upon the industrial dispute referred to it on the basis of dates of removal disclosed by each of the workmen in their statement of claim and no fault can therefore be found with the award passed by the learned labour court on that premise.

Coming now to the question of reinstatement of the workmen, it is to be first noted that each of the workmen were engaged on the part time basis. Even if it is accepted that they are workman in the definition of Section 2(s) of the Act of 1947 by virtue of law propounded by this court in Yaswant Singh (supra), the fact remains that they did not work for full duration and they were being paid a sum of Rs.200/-per month. Their appointment was made on 28th May, 1992 and they worked only upto 31.12.1995 therefore their total working

period was confined to just two years and six months. Reference in this case was made on 3rd May, 1997 and the award was passed on 24th November, 2000 and now these writ petitions are being decided in November, 2006. A long period of 11 years has gone by since when workmen were removed/retrenched from their services. Execution of the award has remained stayed during the pendency of these writ petitions. Such a delay by itself would be a reasonable ground for refusing reinstatement and instead granting lump sum compensation. This has now come to become settled proposition of law following various judicial pronouncements by Hon'ble Supreme Court as also by this Court in Rolasthan Rohan Vs. Central Industrial Tribunal, 1995 SCC (L&S) 142, Gujarat State Road Transport Corporation Vs. Mulluamr, 1995 SCC (L&S) Surjeet Ghosh Vs. UCCO Bank, 1995 SCC (L&S) 529 Gorabha Corporating Marketing Vs. Presiding Officer LLR 1996 (1) 644, Ratan Singh VS. Union of India 1998 SCC (L&S) 170 Dharamveer Singh Vs. State of Rajasthan, WLC (Raj.) 1999 301 (DB), Hindustan Tin Works Pvt. Ltd. Vs. Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 95, Chandu Lal Vs.

The management of M/s. PAN American World Airways, AIR 1985 SC 1128, Sain Steel Products Vs. Naipal Singh & Ors. AIR 2001 SCW 2426, O.P. Bhandari Vs. Indian Tourism Development Corporation Ltd. & Ors. (1986) 4 SCC 337 and Arjun Singh & 4 Ors Vs. Laobur Court, Jodhpur & Ors 2004(4) WLC (Raj.) 145. In the peculiar facts and circumstances of the case, instead of requiring the management to reinstatement the workmen, it would be appropriate to direct payment of lump sum amount to each of the workmen which is quantified in the sum of Rs.25,000/- particularly because the workmen were getting only a sum of Rs.200/- per months.

In the result, the writ petitions are partly allowed and the direction of the labour court for reinstatement of the respondent-workman with continuity in service and payment of 70% of the back wages in all three awards is set aside and the awards are modified by directing the petitioner-State to pay to each of the respondent-workmen a sum of Rs.25,000/- in these three cases in lieu of reinstatement.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-